

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BRIAN ROGERS,

Petitioner,

v.

CASE NO. 2:08-CV-11746  
HONORABLE AVERN COHN

SHIRLEE HARRY,

Respondent.

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**ORDER REQUIRING RESPONDENT TO FILE A RESPONSE  
AND THE STATE COURT RECORD**

This is a habeas case brought pursuant to 28 U.S.C. § 2254. On November 3, 2008, Respondent filed a motion for summary judgment contending that the habeas petition should be dismissed for failure to comply with the applicable one-year statute of limitations set forth at 28 U.S.C. § 2244(d). Petitioner filed a reply to the motion on November 17, 2008 making arguments for tolling due to newly-discovered evidence and actual innocence. Having reviewed the pleadings, the Court finds that a response to Petitioner's reply would assist the Court in ruling on the summary judgment motion. The Court also finds that the state court record is necessary for the proper resolution of this case. Accordingly, the Court **ORDERS** Respondent to file a response to Petitioner's reply, as well as the state court record, within **21 days** of the filing date of this order.

Dated: November 25, 2008

s/Avern Cohn  
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AVERN COHN  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was mailed to Brian Rogers, 200686, Muskegon Correctional Facility, 2400 S. Sheridan, Muskegon, MI 49442 and the attorneys of record on this date, November 25, 2008, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160